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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/696,470 | 10/28/2003 | David L. Poole | PLE 303 | 6916 |
| 23581 | 7590 | 09/16/2005 | | |
| KOLISCH HARTWELL, P.C. 520 S.W. YAMHILL STREET SUITE 200 PORTLAND, OR 97204 | | | EXAMINER | HOEY, ALISSA L |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3765 | |

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|-----------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/696,470 | POOLE, DAVID L. |
| | Examiner | Art Unit |
| | Alissa L. Hoey | 3765 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 31 August 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3, 10, 16-29, 32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3, 10, 16-29, 32 and 33 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. This is in response to RCE received on 08/31/05. Amended of 08/31/05 has been entered, amending claims 1, 3, 10, 22, 29 canceling claims 4-9, 11-15 and 30-31 and adding new claims 32 and 33. Claims 1-3, 10, 16-29, 32 and 33 are examined below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 16, 17, 18, 21-23, 25, 26, 27, 29 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Knox et al. (US 5,814,003).

In regard to claim 1, Knox et al. teaches a sock (10) comprising a body (14, 30), the body comprising an external surface and an internal surface, wherein at least a substantial portion of the internal surface is adapted to contact a wearer when the sock is worn by a user. The sock further comprising first and second openings (18, 20) extended through the body (14) of the sock from the external surface to the internal surface. The openings (18, 20) are sized to be capable of allowing a second sock to be threaded through the openings and retained to the sock. The sock further comprises material (12) behind the openings and attached to the internal surface of the sock such that a wearer's leg is not visible through the openings while the sock is being worn and

the material is configured to be capable of contacting a second sock when the second sock is treaded through the openings (figures 1-3).

In regard to claim 2, Knox teaches the openings being spaced apart parallel slits (18, 20).

In regard to claims 16 and 17, Knox teaches the body (14, 30) including a leg portion (14) and the openings/slits (18, 20) extending through the leg portion of the body of the sock.

In regard to claims 18 and 33, Knox teaches the openings (18, 20) having finished slits that are adapted not to unravel (column 5, lines 1-17).

In regard to claim 21, Knox teaches the body formed from fabric and the openings are formed in the fabric (column 4, lines 28-39).

In regard to claims 22 and 29, Knox teaches the material behind the openings including a swatch attached to the internal surface the body portion (column 4, lines 62-67 through column 5, lines 1-18).

In regard to claim 23, Knox teaches the swatch is a fabric swatch (column 4, lines 36-39).

In regard to claim 25, Knox teaches the swatch (12) is knit to the body (column 4, lines 22-27).

In regard to claim 26, Knox teaches the swatch (12) including a perimeter and further wherein the swatch is attached to the body of the sock along a portion of the perimeter of the swatch (column 22-27).

In regard to claim 27, Knox teaches the swatch (12) defining with the body (14) of the sock a channel (16) though which the second sock may be inserted.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 3, 10, 19, 20, 24, 28 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knox et al.

Knox teaches a sock with openings as described above in claims 1, 2, 18, 22 and 29. However, Knox fails to teach the parallel slits are spaced apart a distance that is proportional to the weight of a material from which the second sock is formed. The slits/openings perimeters are segred, seemed, bound and sealed. The swatch being sewn to the body and attached to the body along the entire perimeter of the swatch. Additionally, Knox fails to teach the body of the sock being formed form a material that is the same as the material behind the openings.

In regard to claim 3, Knox teaches the body of the sock being formed from a material wherein the material behind the openings is formed from a different material.

With respect to the sock and the material being formed from the same material composition, it would have been obvious to have provided the material of the sock and the material of the material being formed of any material as desired weather that is different or the same and as supported in Applicant's specification on page 9, lines 1-3.

In regard to claims 10 and 32, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the parallel slits spaced apart five inches or less because Applicant has not disclosed that the parallel slits spaced apart five inches or less provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the parallel slits spaced apart any distance apart as long as a sock is capable of being retained through the openings and as supported in Applicant's specification on page 7, lines 12-21.

In regard to claim 19, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the perimeter of the slits being serged, seemed, bound or sealed because Applicant has not disclosed that the perimeter of the slits being serged, seemed, bound or sealed provides an advantage, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the slit being serged, seemed, bound or sealed as long as it is finished in any manner to prevent unraveling and as stated in Applicant's specification on page 8, lines 1-3. Therefore, it would have been an obvious matter of design choice to modify Knox to obtain the invention as specified in claim 19.

In regard to claim 20, Knox teaches the body (14, 30) including a leg portion (14) and further wherein the slits (18, 20) extend through the leg portion of the body of the sock.

In regard to claim 24, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the swatch sewn to the body of the sock because Applicant has not disclosed that the swatch being sewn to the body of the sock provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the swatch being sewn to the body or knit with the body because as long as the swatch is attached to the sock the method in which it is attached is not critical and as supported in Applicant's specification on page 8, lines 4-13. Therefore, it would have been an obvious matter of design choice to modify Knox to obtain the invention as specified in claim 24.

In regard to claim 28, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the swatch attached to the body of the sock along the entire perimeter of the swatch because Applicant has not disclosed that the swatch attached to the body of the sock along the entire perimeter of the swatch provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the swatch being attached along it's entire perimeter or along only the upper and lower ends because as long as the swatch is attached to the body of the sock the amount of seams is not critical and as stated in Applicant's specification on page 8, lines 4-13. Therefore, it

would have been an obvious matter of design choice to modify Knox to obtain the invention as specified in claim 28.

Response to Arguments

6. Applicant's arguments filed 08/31/05 have been fully considered but they are not persuasive.

I) Applicant argues that Knox fails to teach a sock with openings that extend between the interior and exterior surface of the body of the sock.

Examiner notes that Applicant's invention also does not specifically teach the openings extending between the interior and exterior surface of the body of the sock due to the material situated behind the openings so that the leg is not visible through the openings. Knox teaches openings that extends through a body portion of a sock from an exterior surface to an internal surface and therefore reads on the limitation as claimed.

II) Further, Applicant argues that the smaller of the holes of Knox would not be suitable to accommodate a sock.

Examiner notes that the claims do not limit the size of the holes being any specific dimension or equal in size to each other. Also, the smaller hole of Knox is made through a knit body which would allow for expansion of the hole that would be capable of retaining part of a sock there through.

III) Applicant argues that Knox fails to teach the openings being spaced five inches or less from eachother.

Examiner notes that Applicant does not state the criticality of the openings being five inches or less from eachother in the specification. If anything Applicant teaches that

the openings can be any distance from eachother as desired based upon end use see specification page 7, lines 12-21.

Conclusion

7. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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